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SUBJECT: COSTA RICA: THE COMMISSION OF EMINENT PERSONS
REPORT

REF: SAN JOSE 2202

1. (SBU) Summary: On September 20 the presidential-appointed Commission of Eminent Persons (the Notables) exited the stage in a notable way; after 60 days of analyzing CAFTA-DR, they made no judgment about whether or not the treaty should be approved. The Commission, however, appeared to be unconvinced of the intrinsic merits of CAFTA-DR, stating that the agreement will only be positive if the country is able to make profound structural changes in political, social, and administrative areas. The initial reaction in the press is well summarized by the headline in La Prensa Libre: Doubts About CAFTA-DR Continue. Our pro-CAFTA-DR contacts were disappointed. End Summary.

Decidedly Undecided

2. (SBU) The commission appeared to be unconvinced of the merits of CAFTA-DR stating that the agreement will only be positive if the country is able to make profound structural changes in political, social, and administrative areas. The 69-page report is emphatic on the need for the GOCR to bring to fruition a strong complementary agenda and CAFTA-DR-implementing legislation. (Note: Doing this is no small task as it will require many legislative projects (time) and resources (human and money)).

3. (SBU) Costa Rican themes of solidarity, universality, and egalitarianism are woven throughout the report. The document is also heavy on reminding the reader that Costa Rica is NOT a developed country and should not be held to higher standards in certain areas such as intellectual property rights (IPR). The asymmetry between the economies of the U.S. and Costa Rica thus is also a theme and is used to strengthen the argument that Costa Rica needs to make profound changes in order to prosper under CAFTA-DR.

4. (SBU) The report, with a few exceptions, gives equal time to both sides and resolves little. However, the report does give clear guidance on the same three points that Antillon covered in the news conference (reftel), namely:

- It doesn't matter if CAFTA-DR is referred to as a treaty or an agreement, the results are the same. Additionally, as one of the Commission members stated in the September 20 press conference, it is clear that the U.S. Congress's approval of the CAFTA-DR implementing legislation meets the Vienna Convention requirements regarding international agreements.

- Costa Rica is able to withdraw from the agreement if it desires.

- Renegotiation is not possible since several countries have already approved CAFTA-DR. However, the report does mention two possible means to effect changes after implementing CAFTA-DR -- by amendment via Article 22.2 of CAFTA-DR and the other utilizing Article 31 of the Vienna Convention.

This last point plays into the hands of presidential candidate Otton Solis by creating a false hope that the Costa Rican Legislative Assembly can make unilateral interpretations on some of its commitments that could correct errors made by the negotiators.

5. (SBU) A good example of the report's ambiguity is when it recognizes the importance of trade in attracting foreign direct investment (FDI) from the U.S. but also draws attention to the importance of production for local use. The report questions how many jobs U.S. FDI actually sustains. The report clearly points out the advantages of access to the world's largest market but fears the crushing of the small Costa Rican farmer by U.S.-subsidized products.

6. (SBU) The report states that CAFTA-DR proposes that

Costa Rica adopt obligations in the areas of intellectual property rights (IPR), services, and investments that are only now being reviewed and renegotiated at the World Trade Organization (WTO), and that were the very contentious disagreements during the talks of the Free Trade Area of the Americas (FTAA). The report notes that requirements made under CAFTA-DR, as compared to those proposed in the FTAA, are more onerous and says that until these issues have been resolved on a more global scale that they should not be imposed by the U.S. in CAFTA-DR (IPR is the clearest example).

17. (SBU) The report also states that the reason the CAFTA-DR debate has become so polarized is the perception that the negotiations proceeded without proper political control over the Costa Rican negotiators. Thus, according to the report, At the end of the negotiations, only two options were presented to the President) to either agree to what they had already negotiated or not be part of the agreement at all, to either send the document they negotiated to the Assembly or not, and to eventually either approve their document or not. That is to say that the opponents to CAFTA-DR feel that there was no possibility to introduce modifications to what was negotiated by the Costa Rican negotiating team. Faced with this choice, it is logical that the citizenry and several business sectors tended to align themselves as either in favor of or against CAFTA-DR.

Asymmetries

18. (SBU) The Commission,s report points out that the population of Central American countries (CA) is only 11.7% that of the U.S.; that CA GDP is 0.5% of that of the U.S., and that Agriculture in CA is 17% of GDP and only 2% in the U.S., etc. The Commission report addressed asymmetries in the negotiations and in the agreement. It notes that Costa Rica was forced to cave on all of its non-negotiable items but that the U.S. did not cede on any of its non-negotiable items. For instance, the report points out that the U.S. was successful in keeping agricultural subsidies out of the negotiations, while Costa Rica was not successful in excluding the opening of the telecommunications or insurance markets.

19. (SBU) The report states that implementing CAFTA-DR in the U.S. requires no substantial institutional changes, while Costa Rica must make significant changes to implement the agreement. In answering its own question, Does CAFTA-DR provide satisfactory safeguards or compensation to offset this asymmetry?, the report states that CAFTA-DR does not include any program, mechanism, or cooperation resources for Costa Rica from the U.S. (Note: The report draws a comparison to the compensation given to the poorer countries adhering to the EU.)

110. (SBU) The Commission,s report is heavy on the need to not just talk about things that should be done to prepare for CAFTA-DR, but to take action. If CAFTA-DR doesn,t address the problem of asymmetries and its possible benefits and few disadvantages depend on factors which are not in CAFTA-DR, the country should prepare itself to enter the game under its rules. Consequently, the best thing to do is to take responsible political action to start your engines, steer a straight course, and determine where we want to go, what type and how much cargo to carry.

SMALL AND MEDIUM FARMERS

111. (SBU) The report recognizes the unique agricultural history of Costa Rica and the still-strong connection to agriculture, even among those who live in San Jose. The negotiation of CAFTA-DR in this arena does not cause major changes in the conditions of existing market access because there is already access to the markets. The Commission also states that, In this particular aspect of the treaty, Costa Rica is strong because its exports are essentially tropical and are not produced in the U.S. They recognize that two sensitive products, onions and potatoes, were given special protections by allowing only a small amount of these products to enter from the U.S. as requested by Costa Rican negotiators.

112. (SBU) One atypically positive view of U.S. subsidies was given in the report: U.S. subsidies can be seen as positive for Costa Rica as much as for consumers as for companies that use these subsidized goods in their production processes (such as wheat, yellow corn and soy), because these crops are not produced in Costa Rica and could then be acquired at better prices in the U.S. market.

INTELLECTUAL PROPERTY RIGHTS

113. (SBU) The report repeats the claims of CAFTA-DR opponents that the U.S. obtained IPR protections in CAFTA-DR that exceed international norms: The chapter on IPR is a clear example of following U.S. policy. The U.S. is implementing requirements via bilateral trade agreements that are currently being discussed contentiously at the WTO. Proceeding this way, the U.S. can gain more concessions in bilateral trade agreements than it could on a multilateral scale.

114. (SBU) The Commission uses the following statistics to shore up their contention that Costa Rica is not a producer of intellectual property and therefore will benefit less from the IPR requirements of CAFTA-DR: The negotiation of this chapter again shows important asymmetries. The number of patents awarded in Costa Rica to citizens in 2002, 2003, and 2004 was respectively, 4, 3, and 2; While the U.S. awarded 84,271 patents in 2004. The report contends that this statistic along with the fact that the national investment in science and technology is only 0.4% of GDP in science and technology reveals that Costa Rica, at this time, is far from being a producer of patents and is more of a consumer and user of foreign innovation.

TELECOMMUNICATIONS

115. (SBU) Universality and solidarity are oft-used words in this section. The report basically says that there are two steps that must be taken as part of implementation of CAFTA-DR: (1) strengthen the Costa Rican Institute of Electricity (ICE), and (2) create a strong regulatory authority to ensure universality and solidarity (meaning equality in the provision of telecommunications services). (Note: Consistent with the Commission's stance on the choosing of fixed dates for implementation of various aspects of CAFTA-DR conditions, the Commission takes issue with the requirement for the GOCR to pass a law to strengthen ICE by December 31, 2004. The report states that this implementation date was strangely established. End Note)

INSURANCE

116. (SBU) With regard to the Costa Rican insurance monopoly, the report notes: The timeframes established are short, and if we add to that fact that we are reaching the implementation dates quickly for Costa Rica, the Commission feels that the pressure is strong and inconvenient. The Commission also recognizes the need to have a strong regulator in the insurance industry.

117. (SBU) The report also expressed the Commission's worry that an evaluation of the financial impacts of opening the insurance market on INS was not completed. Evaluations were also not completed regarding the impacts on employment in this sector, on foreign direct investment, or on the economy as a whole.

COMPLEMENTARY AND IMPLEMENTATION AGENDAS

118. (SBU) The Commission said that CAFTA-DR has already had effects in Costa Rica and that it has precipitated the discussion and debate of essential national agendas to prepare for a future with or without CAFTA-DR.

119. (U) According to the report, the implementation agenda should include: (1) the Telecommunications Act which should meet the requirements of CAFTA-DR in the gradual opening of telecommunications services, (2) the proposed law to strengthen the Costa Rican Institute of Electricity (ICE) which should give ICE the autonomy to operate in a deregulated telecommunications industry, (3) the insurance industry law which will comply with the requirements of CAFTA-DR regarding the gradual opening of the insurance market, and (4) other bills associated with increasing trade capacity, e.g., to improve customs capabilities. The Commission reiterated its worry about the failure of the Mixed Commission to Strengthen ICE.

120. (U) The Commission recommends that the complementary agenda should, at the very least, include projects in the following additional areas:

- education, emphasizing science, technology, and languages, creativity, culture, and ethics;
- strengthening of small and medium businesses;
- improving infrastructure;
- strengthening the office of intellectual property rights protection and developing capabilities in this area;
- creation of an office of trade agreement matters;

-administrative political reform, modernizing the government and simplifying processes; and
-improvement, rationalizing, and harmonization of laws.

THE REPORT,S FINAL CONSIDERATIONS

21. (U) The report,s final considerations section was a general summary of the Commission,s work. It included a fire hydrant metaphor that was repeated by Commission Chairman Chang during the September 20 press conference in which he stated that implementing CAFTA-DR as negotiated would be like connecting a garden hose to the overpowering flow of an open fire hydrant. The report states that It is not that the hydrant is bad. In fact the opposite is true) it supplies ample and much needed water) but we should find a bigger hose and include regulating valves to ensure the best use of the source. The complementary agenda proposed by this Commission is the big fire hose and valves. The agenda currently proposed by the GOCR is the garden hose. It is in the complementary agenda that the Commission has found one of the greatest deficiencies and the need for urgent action.

22. (U) In its report, the Commission recommended caution to the decision-makers and warned that a major diversion of trade may occur because of the preferences given by the U.S. to the countries that have already approved CAFTA-DR, and because there is no certainty that the current benefits that Costa Rica realizes through the unilateral Caribbean Basin Initiative (CBI) will continue if Costa Rica does not approve CAFTA-DR.

23. (U) The Commission writes that not approving CAFTA-DR would result in diminished trade with the U.S., diminished FDI, loss of confidence by third countries who would not invest in Costa Rica except to export to the U.S., and the U.S. poaching the Central American market from Costa Rica.

COMMENT

24. (SBU) The members of the Commission of Eminent Persons managed to deliver a report that pleased almost no one and resolved absolutely nothing. It is hard to say what it will contribute to the ratification debate or whether it will influence the President,s decision to send the treaty to the Legislative Assembly. The Commission members studiously tried to appear even-handed but could not resist casting Costa Rica/Central America throughout the Report as a David up against a U.S. Goliath, but without a sling to defend itself. Perhaps the most helpful observation by the Commission members was the acknowledgment that the consequences of not approving the treaty, which they admit can no longer be changed, would be harmful for Costa Rica economically.
FRISBIE